

Supreme Court, U.S.
FILED
NOV 29 1985
JOSEPH B. SPANOL, JR.
CLERK

No. 84-1717

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL ROBERT QUINN

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI
FILED MAY 2, 1985
CERTIORARI GRANTED OCTOBER 15, 1985

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* The opinion of the court of appeals appears at pp. 1a-4a of the appendix to the petition for a writ of certiorari and the oral ruling of the district court on the "standing" issue appears at pp. 7a-9a of the petition. These have not been reproduced here.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. CR-83-0493-01-RHS

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,
DEFENDANT.

RELEVANT DOCKET ENTRIES

Date	Proceedings
August 4, 1983	– 1 – Filed indictment (Dkt'd 08/09/83).
August 4, 1983	– 1 – Case assigned to JUDGE SCHNACKE (Dkt'd 08/09/83).
August 4, 1983	– 1 – US Attorney NERNEY, D MICHAEL added to case (Dkt'd 08/09/83).
August 4, 1983	– 1 – Bench warrant issued (Dkt'd 08/09/83).
August 4, 1983	– 1 – Order surety/cash bail set in the amount of \$500,000.00 (JUDGE SCHNACKE) (Dkt'd 08/09/83).
August 5, 1983	– 2 – Subpoena (s) returned executed (TO: GEORGE MAYBERRY HUNT – 08/04/83.) (Dkt'd 08/09/83).
August 8, 1983	– 2 – Defendant arrested (Dkt'd 08/16/83).
August 9, 1983	– 3 – Order filed (ORDER UNSEALING INDICTMENT.) (JUDGE SCHNACKE) (Dkt'd 08/09/83).

August 15, 1983—4—Bench warrant returned executed, executed on 08/08/83 (Dkt'd 08/16/83).

August 26, 1983—5—Received documents transferred pursuant to Rule 40 from 0974 (Dkt'd 09/01/83).

September 2, 1983—6—Minute sheet filed (REPORTER: BARBARA STOCKFORD.) (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 2, 1983—6—Arraignment held (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 2, 1983—6—Defendant's first appearance (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 2, 1983—6—Defendant enters plea of not guilty (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 2, 1983—6—Hearing on pre-trial motions set for 10/21/83 @ 9:30 AM (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 2, 1983—6—Trial date set for 11/21/83 @ 10:00 AM (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 09/06/83).

September 6, 1983—7—Received documents transferred pursuant to Rule 40 from 0974 (Dkt'd 09/08/83).

October 18, 1983—8—Notice filed (DEFENDANT'S NOTICE OF RELATED CASE.) (Dkt'd 10/18/83).

October 18, 1983—9—EXHIBITS TO NOTICE OF RELATED CASE. (Dkt'd 10/18/83).

October 18, 1983—10—Order filed (ORDERED: THAT THIS CASE IS NOT RELATED TO CR-81-0030 RPA.) (JUDGE AGUILAR) (Dkt'd 10/18/83).

October 18, 1983—11—Motion for discovery/inspection filed (MOT#1) (Counts 1,2,3,4) (DEFENDANT'S MOTION FOR DISCOVERY.) (Dkt'd 10/18/83).

October 18, 1983—11—Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTED₁ on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983—12—Memorandum in support of motion for discovery/inspection (MOT #1) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DISCOVERY.) (Dkt'd 10/18/83).

October 18, 1983—13—Motion filed (MOT #2) (NOTICE OF MOTION AND MOTION FOR PRESERVATION AND PRODUCTION OF ROUGH NOTES OF PROSECUTION WITNESS INTERVIEWS, OR IN THE ALTERNATIVE FOR SANCTIONS FOR DESTRUCTION OF ANY NOTES.) (Dkt'd 10/18/83).

October 18, 1983—13—Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983—14—Memorandum in support of motion (MOT #2) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRESERVATION AND PRODUCTION OF ROUGH NOTES OF PROSECUTION WITNESS INTERVIEWS OR IN THE ALTERNATIVE, SANCTIONS FOR DESTRUCTION OF ANY NOTES.) (Dkt'd 10/18/83).

October 18, 1983—15—Motion filed (MOT #3) (DEFENDANT'S MOTION FOR PRETRIAL ACCESS TO WITNESSES.) (Dkt'd 10/18/83).

October 18, 1983—15—Mark the beginning of a potential excludable period for type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983—16—Memorandum is support of motion (MOT #3) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRE-TRIAL ACCESS TO WITNESSES.) (Dkt'd 10/18/83).

October 18, 1983-17-Motion filed (MOT #4) (DEFT's MOTION TO REQUEST NOTICE OF THE GOVERNMENT'S INTENTION TO USE EVIDENCE AT TRAIL UNDER RULE 12(B) (2) OF THE F.R.C.R.P.) (Dkt'd 10/18/83).

October 18, 1983-17-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983-18-Motion filed (MOT #6) (NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS.) (Dkt'd 10/18/83).

October 18, 1983-18-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983-19-Motion filed (MOT #6) (NOTICE OF MOTION AND MOTION FOR PROVISION OF BRADY MATERIAL AND DISCLOSURE OF IMPEACHING INFORMATION.) (Dkt'd 10/18/83).

October 18, 1983-19-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983-20-Memorandum in support of motion. (MOT #6) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROVISION OF BRADY MATERIAL AND DISCLOSURE OF IMPEACHING INFORMATION.) (Dkt'd 10/18/83).

October 18, 1983-21-Motion filed (MOT #7) (DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PRETRIAL CONFERENCE.) (Dkt'd 10/18/83).

October 18, 1983-21-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83).

October 18, 1983-22-Memorandum in support of motion (MOT #7) (MEMORANDUM OF (MOT #1) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DISCOVERY.) (Dkt'd 10/18/83.)

October 18, 1983-13-Motion filed (MOT #2) (NOTICE OF MOTION AND MOTION FOR PRESERVATION AND PRODUCTION OF ROUGH NOTES OF PROSECUTION WITNESS INTERVIEWS, OR IN THE ALTERNATIVE FOR SANCTIONS FOR DESTRUCTION OF ANY NOTES.) (Dkt'd 10/18/83.)

October 18, 1983-13-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-14-Memorandum in support of motion. (MOT #2) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRESERVATION AND PRODUCTION OF ROUGH NOTES OF PROSECUTION WITNESS INTERVIEWS OR IN THE ALTERNATIVE, SANCTIONS FOR DESTRUCTION ON ANY NOTES.) (Dkt'd 10/18/83.)

October 18, 1983-15-Motion filed (MOT #3) (DEFENDANT'S MOTION FOR PRETRIAL ACCESS TO WITNESSES.) (Dkt'd 10/18/83.)

October 18, 1983-15-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-16-Memorandum in support of motion. (MOT #3) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRE-TRIAL ACCESS TO WITNESSES.) (Dkt'd 10/18/83.)

October 18, 1983-17-Motion filed (MOT #4) DEFT'S MOTION TO REQUEST NOTICE OF THE GOVERNMENT'S INTENTION TO USE EVIDENCE AT TRAIL UNDER RULE 12(B) (2) OF THE F.R. CR.P.) (Dkt'd 10/18/83.)

October 18, 1983-17-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-18-Motion filed (MOT #6) (NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS.) (Dkt'd 10/18/83.)

October 18, 1983-18-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-19-Motion filed (MOT #6) (NOTICE OF MOTION AND MOTION FOR PROVISION OF BRADY MATERIAL AND DISCLOSURE OF IMPEACHING INFORMATION.) (Dkt'd 10/18/83.)

October 18, 1983-19-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-20-Memorandum in support of motion (MOT #6) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROVISION OF BRADY MATERIAL AND DISCLOSURE OF IMPEACHING INFORMATION.) (Dkt'd 10/18/83.)

October 18, 1983-21-Motion filed (MOT #7) (DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PRETRIAL CONFERENCE.) (Dkt'd 10/18/83.)

October 18, 1983-21-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFOD on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-22-Memorandum in support of motion (MOT #7) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRETRIAL CONFERENCE.) (Dkt'd 10/18/83.)

October 18, 1983-23-Motion for a bill of particulars filed (MOT #8) (Counts 1,2,3,4) (DEFENDANT'S NOTICE OF MOTION AND MOTION FOR BILL OF PARTICULARS.) (Dkt'd 10/18/83.)

October 18, 1983-23-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFBP on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-24-Memorandum in support of motion for a bill of particulars (MOT #8) (Dkt'd 10/18/83.)

October 18, 1983-25-Motion to produce/inspect grand jury testimony filed (MOT #9) (Counts 1,2,3,4) (MOTION FOR DISCLOSURE OF INFORMATION REGARDING THE GRAND JURY.) (Dkt'd 10/18/83.)

October 18, 1983-25-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFGJ on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-26-Memorandum in support of motion to produce/inspect grand jury testimony (MOT #9) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DISCLOSURE OF INFORMATION REGARDING THE GRAND JURY.) (Dkt'd 10/18/83.)

October 18, 1983-27-Motion to suppress evidence filed (MOT #10) (Counts 1,2,3,4) (Dkt'd 10/18/83.)

October 18, 1983-27-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFSE on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-28-Memorandum in support of motion to suppress evidence (MOT #10) (Dkt'd 10/18/83.)

October 18, 1983-29-Motion to reveal identity of informant filed (MOT #11) (Counts 1,2,3,4) (NOTICE OF MOTION AND MOTION FOR REVELATION OF IDENTITY OF INFORMANTS.) (Dkt'd 10/18/83.)

October 18, 1983-29-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFID on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-30-Memorandum in support of motion to reveal identity of informant (MOT #11) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ORDER THE DISCLOSURE OF THE IDENTITY OF THE INFORMANTS.) (Dkt'd 10/18/83.)

October 18, 1983-31-Motion for preservation of evidence filed (MOT #12) (Counts 1,2,3,4) (NOTICE OF MOTION AND MOTION REGARDING THE DESTRUCTION OF EVIDENCE.) (Dkt'd 10/18/83.)

October 18, 1983-31-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFPE on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-32-Memorandum in support of motion for preservation of evidence (MOT #12) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION REGARDING DESTRUCTION OF EVIDENCE.) (Dkt'd 10/18/83.)

October 18, 1983-33-Motion to dismiss filed (MOT #13) (Counts 3-4) (MOTION TO DISMISS COUNTS 3 & 4.) (Dkt'd 10/18/83.)

October 18, 1983-33-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFDC on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-34-Memorandum in support of motion to dismiss (MOT #13) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COUNTS 3 & 4.) (Dkt'd 10/18/83.)

October 18, 1983-35-Motion to dismiss filed (MOT #14) (Counts 1,2,3,4) (NOTICE OF MOTION AND MOTION TO DISMISS INDICTMENT FOR PRE-INDICTMENT DELAY.) (Dkt'd 10/18/83.)

October 18, 1983-35-Mark the beginning of a potential excludable period of type X-E starting on 10/18/83 ((In re MOTFDC on 10/18/83)) (Dkt'd 10/18/83.)

October 18, 1983-36-Memorandum in support of motion to dismiss (MOT #14) (MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS INDICTMENT FOR PRE-INDICTMENT DELAY.) (Dkt'd 10/18/83.)

October 18, 1983-37-CERTIFICATE OF SERVICE OF VARIOUS MOTIONS. (Dkt'd 10/18/83.)

October 18, 1983-38-GOVERNMENT'S OPPOSITION TO NOTICE OF RELATED CASE RE CR 83-493 RHS & CR 81-30 RPA (Dkt'd 10/18/83.)

October 21, 1983-39-Minute sheet filed (REPORTER: BARBARA STOCKFORD.) (JUDGE SCHNACKE (Dkt'd 10/24/83.)

October 21, 1983-39-Hearing on pre-trial motions continued to 11/18/83 @ 9:30 AM. (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 10/24/83).

October 21, 1983-39-Trial date continued to 12/19/83 @ 10:00 AM (Counts 1,2,3,4) (JUDGE SCHNACKE) (Dkt'd 10/24/83).

October 21, 1983-39-Excludable delay based on finding the ends of justice served by continuance began on 10/21/83 and ended on 11/18/83 (JUDGE SCHNACKE) (Dkt'd 10/24/83).

November , 1983-40-Answer to motion for discovery/inspection (MOT #1) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion to produce/inspect grand jury testimony (MOT #9) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion for a bill of particulars (MOT #8) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion to dismiss (MOT #13) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion to dismiss (MOT #14) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion to suppress evidence (MOT #10) (Dkt'd 11/10/83).

November , 1983-40-Answer to motion (MOT #2) (Dkt'd 11/10/83).

November 16, 1983-41- GOVERNMENT'S DECLARATION OF WESLEY DYCKMAN IN OPPOSITION OF DEFT'S OMNIBUS MOTIONS (Dkt'd 11/16/83).

November 19, 1983-42-Minute sheet filed (REPORTER BARBARA STOCKFORD) (JUDGE SCHNACKE) (Dkt'd 11/21/83).

November 19, 1983-42-Hearing on pre-trial motion held 11/18/83 (Count 1-4) (Dkt'd 11/21/83).

November 19, 1983-42-Motion to suppress evidence denied. (MOT #10) (JUDGE SCHNACKE) (Dkt'd 11/21/83).

November 19, 1983-42-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 11/18/83 (Dkt'd 11/21/83).

November 19, 1983-42-Motion for a bill of particulars granted in part: denied in part (MOT #8) (JUDGE SCHNACKE) (Dkt'd 11/21/83).

November 19, 1983-42-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 11/18/83 (Dkt'd 11/21/83).

November 19, 1983-42-Motion to dismiss denied (MOT #13) (JUDGE SCHNACKE) (Dkt'd 11/21/83).

November 19, 1983-42-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 11/18/83 (Dkt'd 11/21/83).

November 23, 1983-43-GVT'S BILL OF PARTICULARS. (Dkt'd 11/25/83).

December 16, 1983-44-Filed government's proposed jury instructions (Counts 1-4) (Dkt's 12/19/83).

December 17, 1983-45-Minute sheet filed (REPORTER BARBARA STOCKFORD) (JUDGE SCHNACKE) (Dkt'd 12/19/83).

December 17, 1983-45-Hearing for possible change of plea held (Count 3) (Dkt'd 12/19/83).

December 17, 1983-45-Defendant enters plea of guilty (Count 3) (JUDGE SCHNACKE) (Dkt'd 12/19/83).

December 17, 1983-46-APPLICATION FOR PERMISSION TO ENTER PLEA OF GUILTY (Dkt'd 12/19/83).

December 17, 1983-46-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 12/19/83 (Dkt'd 12/19/83).

December 17, 1983-46-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 12/19/83 (Dkt'd 12/19/83).

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December 17, 1983-46-Excludable delay due to hearings on Pretrial Motions began on 10/18/83 and ended on 12/19/83 (Dkt'd 12/19/83).

December 17, 1983-46-Motion made in open court to dismiss (MOT #15) (Counts 1-2,4) (Dkt'd 12/19/83).

December 17, 1983-46-Motion to dismiss taken under advisement (MOT #15) (JUDGE SCHNACKE) (Dkt'd 12/19/83).

December 17, 1983-46-Mark the beginning of a potential excludable period of type X-G starting on 12/19/83 ((In re MOTADVDC on 12/19/83)) (Dkt'd 12/19/83).

December 17, 1983-46-Order cause referred to the probation department for a pre-sentence investigation. (Count 3) (JUDGE SCHNACKE) (Dkt'd 12/19/83).

December 17, 1983-47-LETTER FROM US ATTY NERNEY TO DEFENSE COUNSEL RE: PLEA AGREEMENT (Dkt'd 12/19/83).

December 17, 1983-48-Order filed (RE: TRAVEL OF DFT TO PORTLAND AND MINNEAPOLIS) (MAGISTRATE BRENNAN) (Dkt'd 12/20/83).

December 29, 1983-49-Notice filed (JOINT NOTICE OF RELATED CASE TO C83-6070RPA) (Dkt'd 12/30/83).

January 16, 1984-50-Notice filed (RE: RELATING CASE C84-0189SW) (Dkt'd 01/17/84).

January 16, 1984-51-Order filed (CASE IS DEEMED RELATED TO C83-6070 RPA.) (JUDGE SCHNACKE) (Dkt'd 01/25/84).

January 20, 1984-52-Minute sheet filed (REPORTER: B. STOCKFORD) (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-52-Motion to dismiss granted. (MOT #15) (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-52-Dismissed (Counts 1-2,4) (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-52-Sentencing of defendant (Count 3 (3 YEARS CUSTODY OF A.G. \$15,000 FINE.) (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-52-Been exonerated (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-53-Issued judgment and commitment to U.S. Marshal (Count 3) (ENTERED 01/26/84. COPIES TO COUNSEL) (JUDGE SCHNACKE) (Dkt'd 01/26/84).

January 20, 1984-53-Attorney IREDALE, EUGENE G added to case (Dkt'd 01/26/84).

January 25, 1984—54—Filed notice of appeal (Count 3) (APPL #1) (USCA APPEAL NUMBER #84-1017. DEFENDANT'S APPEAL FROM ORDER DENYING MOTION TO SUPPRESS.) (Dkt'd 02/01/84).

January 25, 1984—56—Magistrate's criminal minutes filed. (MAGISTRATE LANGFORD) (Dkt'd 01/26/84).

January 25, 1984—56—Bail hearing held (MOTION FOR BAIL PENDING APPEAL.) (MAGISTRATE LANGFORD) (Dkt'd 01/26/84).

January 25, 1984—56—Excludable delay due to hearings on Pretrial Motions began on 01/25/84 and ended on 01/25/84 (Dkt'd 01/26/84).

January 25, 1984—56—Motion made in open court for bail pending appeal (MOT #16) (MAGISTRATE LANGFORD) (Dkt'd 01/26/84).

January 25, 1984—56—Motion for bail pending appeal denied (MOT #16) (MAGISTRATE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1017

UNITED STATES OF AMERICA,
PLAINTIFF/APPELLEE,

v.

MICHAEL ROBERT QUINN,
DEFENDANT/APPELLANT.

(Notice of Appeal filed January 25, 1984)

RELEVANT DOCKET ENTRIES

Date	Proceedings
August 9, 1984	Recvd letter dated August 9, from (S. Svetcov, counsel for aple) re: additional citations. (8/9) (Panel) tsp
August 15 1984	Recvd letter dated August 13, from (E. G. Iredale, counsel for aplt) re: additional citations. (8/13) (Panel) tsp
August 22, 1984	Recvd letter dated Aug. 20, from (S. Svetcov, counsel for aple) re: additional citations. (8/20) (Panel) tsp
October 23, 1984	R'cvd appellee's additional citation. (Panel) 10/22 ogm
November 2, 1984	ORDERED OPINION (MERRILL) FILED AND JUDGMENT TO BE FILED AND ENTERED.

November 2, 1984—FILED OPINION (PER CURIAM)—REVERSED AND REMANDED. (JUDGE SNEED DISSENTING)

November 2, 1984—FILED AND ENTERED JUDGMENT. EM JS/34

November 13, 1984—Filed motion/Order (Dep. Clk.) granting aple 30 day ext. of time to file petition for rehearing and suggestion for rehearing en banc to Dec. 16, 1984. -ot-

December 14, 1984—Filed aple motion for ext of time to file a petition for rehearing and suggestion for rehearing en banc. 12/13 (panel) -vt-

December 19, 1984—Rec'd orig & 33 copies of aples petition for rehearing with suggestion for rehearing en banc. 12/18 15p (panel) -vt-

December 28, 1984—Filed Order (BROWNING, MERRILL and SNEED) granting the motion for extension of five days to file the petition for rehearing and suggestion for rehearing *en banc*. mb

January 8, 1985—as of 12/28 Filed aples petition for rehearing with suggestion for rehearing en banc. (All active) per order of 12/28/84 -vt-

February 1, 1985—Filed Order (BROWNING, MERRILL and SNEED) denying the petition for rehearing and rejecting the suggestion for a rehearing en banc. The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. app. P. 35(b). mb

February 27, 1985—MANDATE ISSUED [RECALLED 3/14/85]

February 26, 1985—Rec'd aple motion to stay mandate. (case file) -vt-

February 26, 1985—Filed aple motion to recall the mandate for thirty-three days pending filing for cert. (Merrill) 2/28 -vt-

March 14, 1985—Filed Order (MERRILL, CJ) It is ordered that the mandate be recalled and stayed to and including April 2, 1985. mb

April 3, 1985—Filed aplt's motion for a thirty-day stay of mandate pending application for certiorari. (4/3) (MERRILL) EM

April 16, 1985—Filed Order (MERRILL) The stay heretofore granted for issuance of mandate to and including April 2, 1985, is extended to May 2, 1985. mb

May 9, 1985—Recvd SC notice of filing of cert on 5/2/85, SC# 84-1717. EM

October 21, 1985—Filed cert copy of SC order of Oct. 15, 1985 granting cert. #84-1717 (Panel) -ot-

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,

DEFENDANTS.

Criminal No.

VIOLATIONS: Title 21, United States Code, Section 952 (a)—IMPORTATION OF MARIJUANA: Title 21 § 841(a)(1)—POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA: Title 21 § 963—CONSPIRACY TO IMPORT MARIJUANA; Title 21 § 846—CONSPIRACY TO DISTRIBUTE MARIJUANA

INDICTMENT

COUNT ONE: (21 U.S.C., § 952(a))

The Grand Jury charges: THAT

On or about June 23, 1979, in the County of Humboldt, State and Northern District of California,

MICHAEL ROBERT QUINN,

defendant herein, did knowingly and intentionally import into the United States from a place outside thereof approximately 12,000 pounds of marijuana (a Schedule 1 controlled substance), in violation of Title 21, United States Code, Section 952(a).

COUNT TWO: (21 U.S.C. § 841(a)(1))

The Grand Jury further charges: THAT

On or about June 23, 1979, in the County of Humboldt, State and Northern District of California,

MICHAEL ROBERT QUINN,

defendant herein, did knowingly and intentionally possess with intent to distribute approximately 12,000 pounds of marijuana (a Schedule 1 controlled substance), in violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE: (21 U.S.C., § 963)

The Grand Jury further charges: THAT

Beginning at a time unknown to the Grand Jury and continuing up to and including June 23, 1979, in the State and Northern District of California, and in foreign countries, including Columbia, Costa Rica, and Mexico,

MICHAEL ROBERT QUINN,

defendant herein, did knowingly and intentionally combine, conspire, and agree with other persons, both known and unknown to the Grand Jury, to commit an offense against the United States, to wit, the knowing and intentional importation of marijuana (a Schedule 1 controlled substance), in violation of Title 21, United States Code, Section 963.

COUNT FOUR: (21 U.S.C., § 846)

The Grand Jury further charges: THAT

Beginning at a time unknown to the Grand Jury and continuing up to and including June 23, 1979, in the State and Northern District of California, and in foreign countries, including Columbia, Costa Rica, and Mexico,

MICHAEL ROBERT QUINN,

defendant herein, did knowingly and intentionally combine, conspire, and agree with other persons, both known and unknown to the Grand Jury, to commit an offense against the United States, to wit, the knowing and intentional possession of marijuana (a Schedule 1 controlled

substance), with intent to distribute it in violation of Title 21, United States Code, Section 841(a)(1), all in violation of Title 21, United States Code, Section 846.

DATED: 4 AUG 1984

A True Bill.

FOREPERSON

JOSEPH P. RUSSONIELLO
United States Attorney

(Approved as to Form) DMN

AUSA:NERNEY

December 19, 1983

Eugene G. Iredale, Esq.
625 Broadway
Suite 1021
San Diego, California 92101

RE: United States v. Michael Robert Quinn
No. CR-83-0493-RHS USDC ND Calif.

United States v. One Fishing Vessel Named
"SEA OTTER" No. C-831468 S (M) USDC SD
Calif.

United States v. The Quinn Ranch Consisting of
220 Acres In Humboldt County, California,
etc., No. C-83 USDC ND Calif.

Dear Mr. Iredale:

This will confirm our understanding of the terms and conditions by which the above three cases will be resolved:

The Criminal Case

1. Michael Robert Quinn will enter a conditional plea of guilty to Count Three of the Indictment (21 U.S.C. § 963) under F. R. C. P. Rule 11(a)(2) in order to preserve his right to appeal the District Court's decision that he had no standing to contest the search of the "SEA OTTER." The defendant's appeal will be limited to that one issue.

2. The United States at the time of judgment and sentence will move to dismiss counts One, Two and Four of the Indictment. The United States will affirmatively recommend that the defendant not receive more than one year in prison and will not object to a sentence under 18 U.S.C. § 4205(f). However, it is understood that the Court is not bound by the recommendation of the United States and may impose any sentence within the statutory limits.

3. The United States will not oppose the motion of the defendant to remain at large on his own recognizance while he pursues his appeal to the Ninth Circuit Court of Appeals.

4. The United States will not seek to prosecute the defendant for any offenses of which it is now aware that took place within the Northern District of California.

The Forfeiture Action Against the "SEA OTTER"

1. The Defendant Quinn, who is the claimant and owner of record of the "SEA OTTER" in the present action against the vessel in the Southern District of California, will join in a motion that the case be transferred to the Northern District of California under 28 U.S.C. § 1404(a).

2. The Defendant Quinn will thereafter sign a "Joint Notice of Related Case" so that the civil forfeiture action against the defendant vessel may be related to the present criminal case against him in the Northern District of California.

3. The Defendant Quinn will thereafter sign a consent judgment in favor of the United States to be filed before judgment and sentence in the criminal case wherein he relinquishes all right and title to the "SEA OTTER."

4. It is understood that a favorable decision to the Defendant Quinn in his appeal of the District Court's decision as to his standing to contest the search of the "SEA OTTER" in the criminal case will *not* affect the forfeiture of the "SEA OTTER".

The Forfeiture Action Against the Quinn Ranch

1. The Defendant Quinn, who is the claimant and owner of record of the approximate 220 acres in Humboldt County, California, referred to as the "Quinn Ranch", will sign a "Joint Notice of Related Case" so that the civil forfeiture against the approximate 220 acres will be related to the present criminal case against him.

2. The Defendant Quinn will thereafter sign a consent judgment in favor of the United States to be filed before judgment and sentence in the criminal case wherein he relinquishes all right and title to 200 of the approximate 220 acres. Such 20 acres will be located on the periphery, and it is understood that such compromise or settlement does not create any easement or right of ingress or egress over the 200 acres forfeited to the government.

3. During the pendency of the appeal in the criminal case, the Defendant Quinn agrees to continue to make timely payment of all loans or encumberances against the defendant real estate and improvements thereon, and he also agrees to continue in force all insurance policies covering the real estate and improvements thereon. The Defendant Quinn will be reimbursed for all such payments accruing and paid on or after December 19, 1983 if he does not prevail on appeal in the criminal case. Such payment will be made out of the proceeds of the sale of the defendant real estate after the payment of all prior lienholders.

4. The Defendant Quinn also agrees to sign a stipulation relieving the United States Marshal of all responsibility to maintain and protect the defendant real estate and improvements thereon during the pendency of the appeal in the criminal case.

5. Should the Defendant Quinn prevail on appeal in the criminal case, the United States will join in a motion that the consent judgment against the defendant real estate be set aside.

If you and your client agrees with the above terms and conditions, please have Mr. Quinn sign the original of this letter as well as yourself and return it to us.

Very truly yours,

JOSEPH P. RUSSONIELLO
United States Attorney

By: _____
DENNIS MICHAEL NERNEY
Assistant United States Attorney

APPROVED:

MICHAEL ROBERT QUINN

EUGENE G. IREDALE
Attorney for Michael Robert Quinn

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(HON. ROBERT H. SCHNACKE)

Case No. 83-0493

NOTICE OF MOTION AND MOTION
TO SUPPRESS EVIDENCE

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,
DEFENDANT.

TO: JOSEPH P. RUSSONIELLO, UNITED STATES
ATTORNEY, and DENNIS MICHAEL NERNEY,
ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that on Friday, 21 October 1983 at 9:30 a.m. or as soon thereafter as counsel may be heard, the defendant, Michael Robert Quinn, by and through his attorney, Eugene G. Iredale, will move this court to order a suppression of evidence seized as a result of the search of the vessel "The Sea Otter" which occurred in June, 1979.

This motion is based on the instant Motion, the attached Memorandum of Points and Authorities, the files and records of the case, and any and all matters which may come to the court's attention prior to or during the hearing of the instant motion.

Dated: 10 Oct 1983

Respectfully submitted,

EUGENE G. IREDALE
Attorney for Defendant
MICHAEL ROBERT QUINN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(HON. ROBERT H. SCHNACKE)

CASE NO. 83-0493

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO SUPPRESS

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,
DEFENDANT.

I

It is the understanding of the defense that in June, 1979 a Government agency stopped and searched the vessel "The Sea Otter", of which Michael Robert Quinn is the registered owner. Because the Government has not provided counsel with any investigative reports, is unclear whether the Government had any basis for the stop, boarding and search of that vehicle. As a result of the search residue of marijuana was found in a portion of the boat. Because of this certain persons who were on the boat were at one time charged with an offense but the charges were dismissed for lack of evidence. The defendant in this motion hereby moves to suppress all evidence seized and obtained as a result of the stop and search of "The Sea Otter" in 1979, because there was no adequate basis for the stop, and because there was not probable cause to justify this warrantless search of the vessel. The defendant also requests that the court accord an evidentiary hearing to determine adequately and accurately the facts surrounding the stop and boarding, and search of "The Sea Otter" in 1979.

II

In the *United States v. Piner*, 608 F.2d 358 (9th Cir. 1979) the Court of Appeals for the Ninth Circuit concluded:

".... that the random stop and boarding of a vessel after dark for safety and registration inspection without cause to suspect noncompliance is not justified by the Government need to enforce compliance with safety regulations and constitutes a violation of the Fourth Amendment. A stop and boarding after dark must be for a cause, requiring at least a reasonable and articulable suspicion of noncompliance or must be conducted under administrative standards so drafted that the decision to search is not left to the sole discretion of the Coast Guard officer." 608 F.2d 358 at 361.

Piner did nothing more than hold that the standard of articulable suspicion required for a stop under *Terry v. Ohio*, 392 U.S. 1 (1968) applies to vessels at sea. See also *Delaware v. Prouse*, 440 U.S. 648, 654 (1979), *Reid v. Georgia*, 100 S.Court, 2752 (1980).

It is also clear that the search of a vessel, like the search of an automobile requires probable cause, as well as an excuse for noncompliance with the warrant requirement of the Fourth Amendment.

Because the Government has not made available to the defendant any investigative reports, the defense does not know the basis upon which the Government will claim the stop was made, nor does the defendant know whether the Government has an adequate basis to suggest that there was probable cause for the search and seizure that occurred in the instant case apparently at sea. *Prima facie* it

appears that the boarding and search of the vessel was illegal. The defendant respectfully requests that the court grant an evidentiary hearing in this matter, and order the suppression of the results of the search in this case.

Dated: 10 Oct 1983

Respectfully submitted,

EUGENE G. IREDALE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO: CR-83-0493-RHS

GOVERNMENT'S RESPONSE TO
OMNIBUS MOTIONS OF MICHAEL
ROBERT QUINN

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,
DEFENDANT.

[Filed November 8, 1983]

XI. MOTION TO SUPPRESS EVIDENCE

A. The Facts.

In 1978, the Defendant Quinn approached George Mayberry Hunt in Costa Rica and asked him if he would locate a source of marijuana in Colombia and captain a vessel with a load of marijuana from the west coast of Colombia to Humboldt County, California where Quinn owned a large ranch near the ocean. The plan called for Hunt to take the vessel to be supplied by Quinn, pick up the load of marijuana, bring it to Humboldt County and return to Mexico with the vessel and the crew members. Quinn thereafter purchased the SEA OTTER in San Diego, California.

In the Spring of 1979, Quinn turned the SEA OTTER over to three South Americans who had been recruited by Hunt and they took vessel to Salina Cruz, Mexico where Hunt came on board. The SEA OTTER took on a load of marijuana at a point 270 miles off the west coast of Colombia, South America and proceeded north until it was off the coast of Humboldt County where Hunt contacted Quinn by means of V.H.F. radio. The marijuana was off-loaded at Spanish Flat which is in the vicinity of Quinn's ranch by means of a helicopter and inflatable rafts. On the return trip south the SEA OTTER was forced to take refuge in Drake's Bay because of bad weather.

During the evening hours of June 27, 1979, California Fish and Game officers boarded the SEA OTTER which was at anchor because they suspected it was being used for illegal abalone fishing. They were not able to inspect the vessel because of approaching darkness and returned the next morning. They observed marijuana debris and items purchased in Mexico that led them to believe that the SEA OTTER was involved in marijuana smuggling. The state officers departed the vessel and notified the United States Coast Guard by telephone of their suspicions and were asked to follow the SEA OTTER until the Coast Guard and Customs Service personnel arrived on the scene.

Customs Patrol officers on board the United States Coast Guard Cutter POINT CHICO intercepted the SEA OTTER which was proceeding south toward the Farallon Islands at $37^{\circ} 43' N/122^{\circ}, 45' W$, approximately twelve miles offshore and four miles south by south west of the large navigation buoy marking the approach to San Francisco. Two Customs Patrol officers and a coast guard petty officer boarded the SEA OTTER at approximately 10:10 a.m., pursuant to 19 U.S.C. § 1581(a). When the senior customs officer asked for the vessel's documentation, he was told the vessel's papers had fallen into the water on the floor of the forward berthing compartment.

A search of that area failed to reveals the ship's papers. When it was pointed out that one of the two Costa Ricans on board had an expired visa, Hunt admitted he was aware of that fact and that no attempt had been made to contact the United States Customs Service or the Immigration and Naturalization Service upon the vessel's arrival at Drake's Bay. Although all three persons claimed not to have been ashore, the officers observed two fifteen foot zodiac rafts on the deck of the vessel which appeared to have small particles of vegetable matter on them. In searching for documentation for the vessel, the senior officer found a receipt for repair work performed in Salina Cruz, Mexico and learned that such repair work had not been reported to United States Customs.

Based upon all of the foregoing, the SEA OTTER was placed under constructive seizure and taken to the United States Coast Guard Station at Yerba Buena Island. There the forward holds were pumped out and suspected marijuana was found and this material was later submitted to the United States Customs' laboratory for analysis.

Hunt and the two crew members were placed under arrest but were released when no formal charges were brought against them. Hunt stayed in the San Francisco Bay Area for the next nine months while the SEA OTTER underwent repairs. He then took the vessel to Costa Rica and used it for commercial fishing. The SEA OTTER was turned over to Michael Quinn in Punta Arenas, Costa Rica in November, 1981.

B. Quinn Has No Standing To Contest The Search.

The Defendant Quinn has no standing to contest the search of the SEA OTTER. The suppression of a Fourth Amendment violation may be urged only by one whose rights were violated by search, not by one aggrieved by introduction of damaging evidence gathered as a consequence of violation of the rights of another. *Alderman v. United States, supra* 394 U.S. 175.

The proper test to be applied in determining whether Quinn's rights were violated by the search of the SEA OTTER and the seizure of the marijuana is whether, by that act, Quinn suffered an invasion of a legitimate expectation of privacy. *Rakas v. Illinois*, 439 U.S. 128, 148-49 (1978); *United States v. Portillo*, 633 F.2d 1313, 1316 (9th Cir. 1980), *cert. denied*, 450 U.S. 1043 (1981). The burden rests on Quinn, as proponent of the motion to suppress, to establish that his Fourth Amendment rights were violated by the seizure of the marijuana. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980); *Rakas v. Illinois*, 439 U.S. at 131 n.²

Quinn here can assert only ownership as a basis for a legitimate expectation of privacy in the SEA OTTER. Although "property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated," *United States v. Salvucci*, 448 U.S. 83, 91 (1980); *United States v. Perez*, 689 F.2d 1336, 1338 (9th Cir. 1982) (per curiam), the Supreme Court has made clearer still that ownership alone is not determinative. See *Rawlings v. Kentucky*, 448 U.S. 98, 105 (1980); *Mancusi v. DeForte*, 389 U.S. 347, (1967). The Court in *Rakas* recognized that expectations of privacy may be legitimized "by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society," each having varying strength depending upon the circumstances of each case. *Rakas v. Illinois*, *supra* 439 U.S. at 144 n.12. For example the right to exclude others may give rise to a legitimate expectation of privacy and may or may not stem from property interest. *United States v. Perez*, *supra* 689 F.2d at 1338.

² Since Quinn as failed to meet has burden of going forward by appropriate declarations, the government has not filed any declarations except as to standing but would do so if requested by the Court.

Based on these principles, the Ninth Circuit recently decided in a case of first impression that the owner of a vehicle could not contest the legality of the seizure of cocaine while the vehicle was in the possession of a third party since the owner relinquished her expectation of privacy when she lent her automobile, *United States v. One 1977 Mercedes Benz*, 708 F.2d 444 (9th Cir. 1983).

Similary, in *United States v. Dyar*, 574 F.2d 1385, 1390 (5th Cir.), *cert. denied*, 439 U.S. 982 (1978), the Fifth Circuit held that defendants who asserted a leasehold interest in an airplane sufficient to create a traditional property right abandoned any expectation of privacy when they gave possession of the plane to a pilot.

Here Quinn turned the SEA OTTER over to persons unknown to him to take it to South America for a smuggling venture in early 1979 and thereafter allowed Hunt to continue to exercise dominion and control over the vessel until November, 1981. In these circumstances, Quinn can hardly claim any expectation of privacy in the SEA OTTER.

C. *The Search and Seizure of The SEA OTTER was Justified Under Title 19 U.S.C. § 1581(a) and As a Border Search.*

Should the Court decide Quinn has standing to contest the search, the discovery of the marijuana was justified as a Customs search under 19 U.S.C. § 1581(a) or as a border search.

The initial boardings of the SEA OTTER by California Fish and Game officers was part of a regulatory inspection scheme authorized under California Fish and Game Code §§ 1006, 2012 and 7702.³ The Courts have long recognized administrative inspections in closed regulated enterprises

³ Section 1006. *Inspection*. The department may inspect the following:

(a) All boats, markets, stores and other buildings, except dwellings, and all receptacles, except the clothing actually worn by a person at

such as commercial fishing as an exception to the warrant requirement of the Fourth Amendment. *United States v. Raub*, 637 F.2d 1205, 1208 (9th Cir. 1980) and *United States v. Tsuda Maru*, 470 F.Supp. 1223, 1228 (D. Alaska 1979).

The Supreme Court has held that the Fourth amendment requires a warrant for administrative searches of private property except in "certain carefully defined clauses of cases." *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967). One of the recognized exceptions to the warrant requirement is for administrative searches of enterprises that traditionally have been closely regulated. See *United States v. Biswell*, 406 U.S. 311 (1972); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970). "Commercial fishing has a long history of being a closely regulated industry" *United States v. Raub*, *supra* at 1209.

the time of inspection, where birds, mammals, fish, reptiles or amphibia may be stored, placed, or held for sale or storage.

(b) All boxes and packages containing birds, mammals, fish, reptiles or amphibia which are held for transporation by a common carrier. (Amended by Stats. 1972, c. 974, p. 1766, § 4.)

Section 2012. *Exhibition to officer of thing demanded*. All licenses, license tags, and the birds, mammals, fish, reptiles, or amphibia taken or otherwise dealt with under the provisions of this code, and any device apparatus designed to be, and capable of being, used to take birds, mammals, reptiles, or amphibia shall be exhibited upon demand to any person authorized by the department to enforce the provisions of this code or any law relating to protection and conservation of birds, mammals, fish, reptiles or amphibia. (Amended by Stats. 1974, c. 605, p. 1446, § 3.)

Section 7702. *Investigation of fish processing*. The department may enter and examine any canning, packing, preserving, or reduction plant, or place of business where fish or other fishery products are packed, preserved, manufactured, bought or sold, or board any fishing boat, barge, lighter, tender, or vehicle or receptacle containing fish, and ascertain the amount of fish received, or kind and amount of fishery products packed or manufactured and the number and size of containers or cans for fishery products purchased, received, used, or on hand and may examine books and records containing any account of fish caught, bought, canned, packed, stored or sold. (Stats. 1957, c. 456, p. 1424, § 7702)

In *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978), the Supreme Court clarified the administrative search exception. The distinguishing element giving rise to the exception in pervasively regulated *Biswell* businesses or traditionally regulated *Colonnade* industries, said the Court, is the awareness and expectation by a person entering such a business that he is subjecting himself to government's supervision and regulation. Under these conditions, no reasonable expectation of privacy can exist for the proprietor of the enterprise. The businessman in a regulated industry in effect consents to the restrictions placed upon him." *Almeida-Sanchez v. United States*, 413 U.S. 266, 271 (1973).

The authority of the Customs Service to stop the SEA OTTER is quite clear. Title 19 U.S. C. § 1581(a) which provides that: "[a]ny officer of the customs may at any time go on board of any vessel . . . at any place in the United States . . . and examine the manifest and other documents and papers . . . and to this end may hail and stop such vessel . . . and use all necessary force to compel compliance."

This statutory authority was recently upheld in *United States v. Villamonte-Marquez* ____U.S.____ 103 S.Ct. 2573 (1983). The fact that the fish and game wardens had provided information concerning the suspicious circumstances that they had observed does not change the result. *Villamonte-Marquez*, *supra* at 2477 n.3. "We would see little logic in sanctioning such examinations of ordinary unsuspect vessels but forbidding them in the case of suspected smugglers." *United States v. Arra*, 630 F.2d 836, 846 (1st Cir. 1980).

Alternatively the search can be justified as a border search. Probable cause is not required for a search made at or near an international boundary in connection with the enforcement or customs laws. *Klien v. United States*, 472 F.2d 847, 849 (9th Cir. 1973). It should be noted that the

Controlled Substances Act criminalizes exportation of contraband, as well as importation. 21 U.S.C. § 953. It is equally unlawful to possess contraband on board vessel "arriving or departing from the United States or *the customs territory* of the United States." (emphasis added). 21 U.S.C. § 955.

In *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), the Supreme Court held that the great latitude allowed for searches at the border also extends to the border's functional equivalents.

In *Alexander v. United States*, 362 F.2d 379 (9th Cir.), *cert. denied*, 385 U.S. 977 (1966), the Ninth Circuit set out the criteria for a customs search at the functional equivalent of the border. In *Alexander*, the Court declared that:

Where . . . a search for contraband by Customs officers is not made at or in the immediate vicinity of the point of international border crossing, the legality of the search must be tested by a determination whether the totality of the surrounding circumstances, including the time and distance elapsed, as well as the manner and extent of surveillance, are such as to convince the fact finder with reasonable certainty that any contraband which might be found in or on the vehicle [or vessel] at the time of search was aboard the vehicle [or vessel] at the time of entry into the jurisdiction of the United States. Any search by Customs officials which meets this test is properly called a 'border search.'

Id. at 382.

In *United States v. Solmes*, 527 F.2d 370 (9th Cir. 1975), it was held that a search without probable cause pursuant to 19 U.S.C. § 1581(a) of a vessel in a harbor may be valid under the Fourth Amendment as a border search at the functional equivalent of the border, where there is

evidence to support a finding that the boat actually came from international or foreign waters. In *United States v. Tilton*, 534 F.2d 1363 (9th Cir. 1976), *Solmes* was expanded to cover situations where there are articulable facts to support a reasonably certain conclusion by the Customs officers that a vessel has crossed the border and entered our territorial waters. This latter rule looks not to whether the vessel actually crossed into the United States territory, but whether the searching customs officers were reasonably certain that it did. The crossing of the three mile limit of United States territorial waters can also be a functional border crossing. *United States v. Stanley*, 545 F.2d 661 (9th Cir. 1976).

Of course, neither actual observation of the vessel crossing the border, nor continuous surveillance of the vessel, is a necessary requisite for a constitutional border search as long as other factors indicate that the contraband was taken across an international border and the "nexus" with the border remains unbroken. See e.g., *United States v. Solmes*, *supra*; *Leeks v. United States*, 356 F.2d 471 (9th Cir. 1966); *United States v. Ingham*, 502 F.2d 1287 (5th Cir. 1974). However, in the present case the boat was under surveillance at the actual crossing of the border and this meets the second requirement of the *Alexander* criteria.

Based on the facts of this case, the SEA OTTER was at the functional equivalent of the border at Drake's Bay. The absence of an actual observation of a boundary crossing does not preclude a subsequent search from qualifying as a "border" search. *United States v. Ingham*, *supra* 502 F.2d 1287. Because of the illegal alien on board and the fact the vessel had recently been repaired in Mexico, it was legitimate for the officers to conclude that the SEA OTTER had been in foreign waters. Thus, as the search was a border search, the officers did not need probable cause, the fact of its being a border search suffices. *United*

States v. Barclift, 514 F.2d 1073 (9th Cir. 1975); *Klien v. United States, supra*; *Witt v. United States*, 287 F.2d 389 (9th Cir.), cert. denied, 366 U.S. 950 (1961). The "mere suspicion" that the SEA OTTER had been used to unlawfully import (21 U.S.C. § 952), export (21 U.S.C. § 953[c]), or possess (21 U.S.C. § 955) marijuana was all that was required in this case.

In the alternative, the seizure of the SEA OTTER can be justified as an outgoing border search. The facts here are very analogous to those in *United States v. Stanley, supra* where the Ninth Circuit recognized the validity of the seizure of a United States fishing vessel leaving the territorial waters of the United States (three mile limit). In *Stanley*, a Sonoma County Deputy Sheriff discovered marijuana debris near a U-Haul rental truck stuck on a pier at Bodega Bay. He concluded that a fishing vessel foreign to Bodega Bay seen leaving the harbor had unloaded marijuana. He notified the Coast Guard and requested the apprehension of the vessel. The fishing boat O/S NATIONAL was first seen about nine miles from the coast and boarded 40 minutes later by Customs Patrol and Coast Guard personnel. There the Ninth Circuit concluded that the search and seizure of the NATIONAL was valid as a functional border search when the vessel had crossed from territorial waters of the United States and there is sufficient evidence to convince a fact finder, to a reasonable certainty, that any contraband which might be found at the time of the search was also aboard at the border crossing.

DATED: November 8, 1983

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

By:

DENNIS MICHAEL NERNEY
Assistant United States Attorney
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No: CR-83-0493-RHS
UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL ROBERT QUINN,
DEFENDANT.

[Filed November 10, 1983]

DECLARATION OF WESLEY DYCKMAN IN OP-
POSITION OF DEFENDANT'S OMNIBUS MOTIONS

I, WESLEY DYCKMAN, depose and state:

1. In 1975, George Mayberry Hunt moved to Costa Rica and made that his primary place of residence until 1983. My source of information is George Mayberry Hunt and a review of Costa Rican immigration documents.

2. In February, 1976, George Mayberry Hunt took part in the importation of approximately 16,000 pounds of marijuana into the United States at Bodega Bay, California. He was indicted in the Northern District of California for his participation in that event in February, 1981, and that the indictment was superseded in February, 1982. My source of information is George Mayberry Hunt and a review of Northern District of California Criminal Case Number 81-0030-RPA.

3. In 1978, the Defendant Quinn approached George Mayberry Hunt in Costa Rica and asked him if he would locate a source of marijuana in Colombia and captain a

vessel with a load of marijuana from the west coast of Colombia to Humboldt County, California where Quinn owned a large ranch near the ocean. The plan called for Hunt to recruit a crew for the vessel which Quinn would purchase, pick up a load of marijuana on the west coast of Colombia and bring it to Humboldt County and return to Mexico with the vessel and the crew members. Quinn thereafter purchased the SEA OTTER in San Diego, California. My source of information is George Mayberry Hunt and a review of United States Coast Guard documentation for the SEA OTTER.

4. In May, 1979, Hunt and two Costa Rican crew members picked up an approximate twelve ton load of marijuana off the west coast of Colombia and proceeded north until the SEA OTTER was off the coast of Humboldt County where Hunt contacted Quinn by means of V.H.F. radio. The marijuana was offloaded at Spanish Flat which is in the vicinity of Quinn's ranch by means of helicopter during the day light hours and the job was completed after dark by means of inflatable rafts called Zodiacs. On the return trip south, the SEA OTTER was forced to take refuge in Drake's Bay because of bad weather. My source of information is George Mayberry Hunt.

5. California Fish and Game officers boarded the SEA OTTER because of suspected fishing violations at Drake's Bay on the evening of June 27, 1979. The observations of these officers were reported to the United States Coast Guard and Customs Service who intercepted the vessel approximately twelve miles off the coast as it travelled south toward the Farallon Islands. The SEA OTTER was placed under constructive seizure and taken to Yerba Buena Island where a more thorough search was performed on the vessel. The forward holds were pumped out and suspected marijuana was found and this material was later submitted to the United States Customs laboratory for

analysis. Hunt and the two South American crew members were placed under arrest but were released when no formal charges were brought against them. My source of information is George Mayberry Hunt and Customs Patrol Officer George Bruns.

6. Hunt stayed in the San Francisco Bay Area for the next nine months while the SEA OTTER underwent repairs. He then took the vessel to Costa Rica and used it for commercial fishing. The SEA OTTER was turned over to Michael Quinn in Punta Arenas, Costa Rica in November, 1981. My source of information is George Mayberry Hunt.

7. The marijuana debris which was recovered from the F/V SEA OTTER on June 28, 1979 at Yerba Buena Island was submitted to United States Customs chemist David Chia on June 28, 1979. Mr. Chia tested the samples submitted and responded that marijuana was present. The samples were returned from the customs laboratory on June 19, 1979 to Custom Patrol Officer Art Cruz who submitted them to the customs seizure custodian on that date. The evidence was destroyed on March 25, 1980 according to United States Customs' internal procedures after it was determined that it was not needed for trial. My source of information is Supervisory Customs Patrol Officer Ed Callahan and a review of the relevant customs forms and records.

8. In the Spring of 1982, Costa Rica rendered over Musa Shihadeh to the United States authorities on a New Jersey murder charge. Prior to that time Costa Rica had never extradited anyone to the United States and was a notorious haven for fugitives from the United States. In July, 1982, United States officials went to Costa Rica to negotiate an Extradition Treaty with that government. My source of information is Rex Young, Senior Attorney-Advisor, Officer of International Affairs, United States Department of Justice, Washington, D.C.

9. In August, 1982, agents of the Drug Enforcement Administration located George Mayberry Hunt in Costa Rica. My source of information is William Hansen of the Drug Enforcement Administration who was then stationed in Costa Rica.

10. In August, 1982, the United States Attorney's Office for the Northern District of California submitted papers for the extradition of George Mayberry Hunt to the Office of International Affairs for review and translation into Spanish. Those papers were hand delivered to Costa Rican authorities in October, 1982 and George Mayberry Hunt was provisionally arrested on November 9, 1982 in connection with Northern District of California Criminal Case Number 81-0030-RPA. After the exhaustion of his judicial remedies in Costa Rica, George Mayberry Hunt was brought to the Northern District of California where he was arraigned on May 12, 1983. My source of information is Rex Young and a review of Northern District of California Criminal Case Number 81-0030-RPA.

11. In June, 1983, George Mayberry Hunt entered into an agreement with the United States Attorney whereby he plea-bargained the charges against him and agreed to testify before the Grand Jury.

12. On August 4, 1983, George Mayberry Hunt testified before Federal Grand Jury 83-2 which returned a true bill against Michael Robert Quinn on the same day. Quinn was arrested in San Diego, California on August 8, 1983 and ordered removed to the Northern District of California. My source of information is my participation in the case and a review of the Northern District of California Criminal Number 83-0493-RHS.

13. George Mayberry Hunt was and is represented by Attorney John Milano of San Francisco in Criminal Case Number 81-0030-RPA. Mr. Milano advises me that he was contacted by Quinn's attorney, Eugene Iredale in September, 1983 and he declined to furnish Mr. Iredale

with Hunt's current address or produce him for interview. Mr. Milano has not since been contacted by anyone representing Mr. Quinn. My source of information is Mr. Milano.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of November, 1983 at San Francisco, California.

WESLEY DYCKMAN, Special Agent
Drug Enforcement Administration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing DECLARATION OF WESLEY DYCKMAN IN OPPOSITION OF DEFENDANT'S OMNIBUS MOTIONS has been mailed this date to the following:

Gene Iredale, Esq.
Attorney at Law
625 Broadway, Suite 1021
San Diego, California 92101.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of November, 1983 at San Francisco, California.

ADDIE L. BANKS, Secretary
United States Attorney's Office

DEFENDANT

MICHAEL QUINN

NORTHERN DISTRICT OF CALIFORNIA

DOCKET NO. CR 83-493 RHS

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (10/79)

In the presence of the attorney for the government
the defendant appeared in person on this date

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

EUGENE IREDALE 625 BROADWAY # 1135, SAN DIEGO 92101

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that NOLO CONTENDERE, NOT GUILTY there is a factual basis for the plea.

There being a finding/verdict of NOT GUILTY. Defendant is discharged

FINDING &

JUDGMENT

SENTENCE

OR

PROBATION ORDER

338

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE YEARS AND FINED \$15,000.00.

ENTERED IN CRIMINAL DOCKET 1/26, 7984

ADDITIONAL CONDITIONS OF PROBATION

44 ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

SIGNED BY

U.S. District Judge

U.S. Magistrate

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Robert H. Schnacke

29 JAN. 20, 1984

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-6070 RHS

UNITED STATES OF AMERICA
PLAINTIFF,

v.

THE QUINN RANCH CONSISTING OF APPROXIMATELY 220 ACRES IN HUMBOLDT COUNTY, CALIFORNIA, LOCATED AND DESCRIBED AS THAT PART OF SECTION 12, IN TOWNSHIP 3 SOUTH, RANGE 2 WEST, HUMBOLDT COUNTY, PARCEL NUMBER 104-052-16; RECORDED IN THE HUMBOLDT COUNTY RECORDER'S OFFICE IN BOOK 1428, PAGE 031, AND THAT PART OF SECTION 12, IN TOWNSHIP 3 SOUTH, RANGE 2 WEST, HUMBOLDT COUNTY PARCEL NUMBER 104-052-17, RECORDED IN THE HUMBOLDT RECORDER'S OFFICE IN BOOK 1428, PAGE 031; AND ALL IMPROVEMENTS THEREON CONSISTING OF A SINGLE FAMILY RANCH STYLE RESIDENCE, A BARN, SEVERAL OUT-BUILDINGS, A WOOD FRAME GREENHOUSE, SHEDS, SEVERAL WHITE COLORED SPHERICAL WATER STORAGE TANKS, A WHITE COLORED WIND POWERED GENERATOR, AND VEHICLES,

DEFENDANT.

MICHAEL ROBERT QUINN
CLAIMANT

[Filed January 20, 1984]

CONSENT JUDGMENT OF FORFEITURE

On December 19, 1983 a Complaint for Forfeiture against the above-described real property was filed in this Court on behalf of the United States of America by the

United States Attorney for this district. The Complaint alleges that the defendant real property was acquired and improved with assets traceable to the unlawful exchange of controlled substances, and that the property was unlawfully used to contain and secrete controlled substances, all in violation of Title 21, U.S.C. § 881. The owner of record, Michael Robert Quinn aka Michael R. Quinn, intervened and filed a claim to the real property on December 29, 1983. Pursuant to a Warrant of Arrest issued by this Court, the United States Marshal for this district seized the said real property on January 7, 1984. The Claimant Quinn now consents that a Judgment, as prayed for in the Complaint, be entered condemning 200 of the approximate 220 acres under seizure.

The Court being fully advised in the premises, and on motion of the parties hereto:

IT IS ORDERED AND ADJUDGED, AND DECREED that judgment be entered against the following described defendant real property situated in the County of Humboldt, State of California and that said real property hereby is condemned and forfeited to the United States of America:

/
/

PARCEL ONE: THE Southeast Quarter of the Northwest Quarter, the East Half of the Southwest Quarter and the West Half of the Southeast Quarter of Section 12, Township 3 South, Range 2 West, Humboldt Meridian.

PARCEL TWO: All that portion of the Southwest Quarter of the Northwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 12, Township 3 South, Range 2 West, Humboldt Meridian, lying Easterly of the center line of the existing road.

PARCEL THREE: The Northwest Quarter of the Southwest Quarter of Section 12, Township 3 South, Range 2 West, Humboldt Meridian, lying Easterly of the existing road.

PARCEL FOUR: A non-exclusive easement for ingress and egress over the existing road known as "Cooskie Ridge Road", which road commences at the County Road in Section 24, Township 2 South, Range 2 West, Humboldt Meridian, and extends in a Southerly direction through said Section 24, and through Sections 25, 26, 35 and 36, Township 2 South, Range 2 West, Humboldt Meridian, and through Sections 1, 2, 11 and 12, Township 3 South, Range 2 West, Humboldt Meridian.

Excepting to Michael Robert Quinn aka Michael R. Quinn that parcel of land situated in the County of Humboldt, State of California generally described as follows:

All that portion of the Northwest quarter of the Southwest quarter of Section 12, Township 3 South, Range 2 West, Humboldt Meridian, lying easterly of the existing road known as "Cooskie Ridge Road" and the West half of the West half of the Northeast quarter of the Southwest quarter; and the Southwest quarter of the Southwest quarter of the Southeast quarter of the Northwest quarter; and the Southeast quarter of the Southeast quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 3 South Range 2 West, Humboldt Meridian, containing 20 acres more or less. There is reserved to Michael Robert Quinn aka Michael R. Quinn a non-exclusive easement for ingress and egress to the above excepted land over the existing road known as "Cooskie Ridge Road", which road commences at the County Road in Section 24, Township 2 South, Range 2 West, Humboldt Meridian, and extends in a Southerly direction through said Section 24, and through Sections 25, 26, 35 and 36, Township 2 South, Range 2 West, Humboldt Meridian, and through Sections 1, 2, 11 and 12, Township 3 South, Range 2 West, Humboldt Meridian.

IT IS FURTHER ORDERED THAT the Claimant Michael Robert Quinn execute all conveyances or other legal documents necessary to perfect title in the defendant real property in the United States of America.

IT IS FURTHER ORDERED THAT each party shall bear its own cost.

Dated at San Francisco, California, this 20th day of January, 1984.

ROBERT H. SCHNACKE
United States District Judge

We hereby expressly consent to entry of the foregoing Consent Judgment of Forfeiture against the defendant real property in favor of the Plaintiff, United States of America and against Michael Robert Quinn, Claimant in this action.

JOSEPH P. RUSSONIELLO
United States Attorney

Dated: January 20, 1984

DENNIS MICHAEL NERNEY
Assistant United States Attorney
Attorneys for Plaintiff

Dated: January 20, 1984

MICHAEL ROBERT QUINN

Dated: January 20, 1984

EUGENE G. IREDALE
Attorney for claimant
MICHAEL ROBERT QUINN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-84-0189-RHS

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

ONE FISHING VESSEL NAMED "SEA OTTER" OFFICIAL
NUMBER 580508,
DEFENDANT.

MICHAEL ROBERT QUINN,
CLAIMANT.

Filed January 20, 1984

CONSENT JUDGMENT OF FORFEITURE

On August 9, 1983, a Complaint for Forfeiture against the above-described vessel was filed in the United States District Court for the Southern District of California on behalf of the United States of America by the United States Attorney and an Assistant United States Attorney for that district. The Complaint alleges that the vessel was unlawfully used for the importation of marijuana into the United States in violation of Title 19, United States Code, Section 1595a(a), Title 21, United States Code, Section 881 and Title 49, United States Code, Section 781. Pursuant to a Warrant of Arrest issued by that Court, the

United States Marshal for that district seized the said vessel on August 9, 1983. Notice of such seizure was thereafter duly published in the *San Diego Daily Transcript*, a newspaper of general circulation in the Southern District of California. Michael Robert Quinn subsequently intervened and filed a Claim to the defendant vessel and filed an answer to the complaint for forfeiture on September 1, 1983. His sole interest in the defendant vessel has been verified by the Coast Guard, and no liens or other encumbrances exist. On Stipulation of the parties, the case was ordered transferred to the Northern District of California pursuant to Title 28, United States Code, Section 1404 on January 6, 1984. The Claimant Quinn now consents that a Judgment, as prayed for in the Complaint, be entered condemning the vessel under seizure.

The Court being fully advised in the premises, and on the motion of the parties hereto:

IT IS ORDERED AND ADJUDGED, AND DECREED that judgment be entered against the defendant vessel and that said vessel be and hereby is condemned and forfeited to the United States of America;

IT IS FURTHER ORDERED that each party shall bear its own costs.

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/ / /

Dated at San Francisco, California, this 20th day of January, 1984.

ROBERT H. SCHNACKE
United States District Judge

We hereby expressly consent to entry of the foregoing Consent Judgment of Forfeiture against the defendant vessel in favor of the Plaintiff, United States of America and against Michael Robert Quinn, Claimant in this action.

JOSEPH P. RUSSONIELLO
United States Attorney

DENNIS MICHAEL NERNEY
Assistant United States Attorney
Attorneys for Plaintiff

Dated: January 20, 1984

MICHAEL ROBERT QUINN
Claimant

Dated: January 20, 1984

EUGENE G. IREDALE
Attorney for claimant
MICHAEL ROBERT QUINN

In the Supreme Court of the United States

NO. 84-1717

UNITED STATES, PETITIONER

v.

MICHAEL ROBERT QUINN

ORDER ALLOWING CERTIORARI.

Filed October 15, 1985.

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Ninth Circuit* is granted.